

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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NEW MEXICO UNITED FOOD AND	:	
COMMERCIAL WORKERS UNION'S	:	
AND EMPLOYERS' HEALTH AND	:	
WELFARE TRUST FUND, on behalf	:	
of itself and all others similarly situated,	:	
	:	
Plaintiff,	:	
v.	:	CIVIL ACTION NO. 07-cv-6916 -JGK
	:	
PURDUE PHARMA L.P., et al.,	:	
	:	
Defendant	:	
	:	
	:	

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**RESPONSE OF PLAINTIFF TO DEFENDANT'S FIRST AND SECOND NOTICES OF  
SUPPLEMENTAL AUTHORITY**

Plaintiff files this Response to Defendant's First and Second Notices of Supplemental Authority filed on April 7, 2008 and June 17, 2008, respectively:

1. The first Notice cites the case *Mclaughlin, et al. v. American Tobacco Co. , et al.*, No. 06-4666-cv, F.3d, 2008 WL 878627. The second Notice cites the <sup>1</sup> *Bridge, et al. v. Phoenix Bond & Indemnity Co., et al.*, No. 07-210, 2008 WL 2329761. Defendants attempt to reconcile and relate the two cases to the present case.
2. It is plaintiff's position that only the *Bridge* decision may aid the Court in ruling on the pending Motion to Dismiss.
3. In *Bridge*, the Court affirmed the Seventh Circuit's ruling that Plaintiff bringing RICO claims under 18 § U.S.C. 1962(c) need not show reliance on defendant's alleged misrepresentation in order to substantiate their claims. The Court determined

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<sup>1</sup> Bridge V. Phoenix Bond & Indemnity Co., No. 07-210. October 2007 Term, June 20, 2008

that even when the predicate action underlying the RICO claim is mail fraud, Plaintiff

need not to prove reliance as an element of the RICO claim itself, not as a prerequisite to establishing proximate causation.

4. The Court's determination "In *Bridge*" rested on an analysis of the RICO statute themselves as well as the requirements for proving fraud at common law. The Court writes, "[i]f petitioners' proposed requirement of first-party reliance seems to come out of nowhere, there is a reason: Nothing on the face of the relevant statutory provisions imposes such a requirement". The Court further opined that defendant's attempt to derive a reliance requirement based on common law fraud was inappropriate, since the violation alleged by Plaintiff is not common law fraud but "mail fraud", a term defined explicitly by the statute.
5. The Court then reaffirmed the proximate cause element analysis put forth in *Holmes v. Securities Investor Protection Corporation*, 503 U.S. 258 (1992), and determined that "[h]aving rejected petitioners' argument that reliance is an element of a civil RICO claim based on mail fraud, we see no reason to let that argument in through the back door by holding that the proximate-cause analysis under RICO must precisely track the proximate-cause analysis of a common-law fraud claim"<sup>2</sup>. As the Court explained, "the fact that proof of reliance is often used to prove an element of causation, does not transform reliance itself into an element of the cause of action."<sup>3</sup>

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<sup>2</sup> *Id.* at 15-16

<sup>3</sup> *Id.* at 19.

6. The decision impacts the vitality of the Second Circuit's decision in *McLaughlin v. Philip Morris*.<sup>4</sup> The Second Circuit's opinion, that "under RICO, each plaintiff must prove reliance, injury, and damages" is no longer good law. Consequently, plaintiff's ask this Honorable Court to consider *Bridge* when making a decision as to the pending Motion to Dismiss.

Date: June 20, 2008

Respectfully submitted,

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<sup>4</sup> *McLaughlin v. Philip Morris* F.3d.2008 WL 878627 (2d Cir. Apr. 3, 2008).

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